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Our reference: POL/69 1050/1/1

Your reference:

12th May. 1969

Dear Chief Constable,

HOME OFFICE CIRCULAR NO. 97/1969

Informants who take part in crime

The Home Secretary's attention has been drawn to judicial comment in the appeal of Cork, Colman and Macro and to criticism of police action in several other cases involving police use of informants who took part in crime. He sought information about police practice from the Commissioner of Police of the Metropolis and through H.M. Inspectors of Constabulary. The Central Conference on 6th March gave an opportunity for a general discussion of practices and principles.

2. The Conference fully recognised that informants, properly employed, were essential to criminal investigation and that, within limits, they ought to be protected. The risks attached to their employment were obvious, however, and safeguards were needed before use was made of an informant taking part in crime. The Conference appreciated that circumstances varied so widely that it was difficult to establish rules of general application; but the discussion identified the principles listed in the next paragraph.

3. The Conference in general agreed on the following points.

(a) No member of a police force, and no police informant, should counsel, incite or procure the commission of a crime.

(b) Where an informant gives the police information about the intention of others to commit a crime in which they intend that he shall play a part, his participation should be allowed to continue only where:-

(i) he does not actively engage in planning and committing the crime;

(ii) he is intended to play only a minor role; and

(iii) his participation is essential to enable the police to frustrate the principal criminals and to arrest them (albeit for lesser offences such as attempt or conspiracy to commit the crime, or carrying offensive weapons) before injury is done to any person or serious damage to property.

The informant should always be instructed that he must on no account act as agent provocateur, whether by suggesting to others that they should commit offences or encouraging them to do so, and that if he is found to have done so he will himself be liable to prosecution.

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(c) The police must never commit themselves to a course which, whether to protect an informant or otherwise, will constrain them to mislead a court in any subsequent proceedings. This must always be regarded as a prime consideration when deciding whether, and in what manner, an informant may be used and how far, if at all, he is to be allowed to take part in an offence. If his use in the way envisaged will, or is likely to, result in its being impossible to protect him without subsequently misleading the court, that must be regarded as a decisive reason for his not being so used or not being protected.

(d) The need to protect an informant does not justify granting him immunity from arrest or prosecution for the crime if he fully participates in it with the requisite intent (still less in respect of any other crime he has committed or may in future commit).

(e) The handling of informants calls for the judgment of an experienced officer. There must be complete confidence and frankness between supervising officers and subordinates, and every chief officer of police should ensure effective supervision of his detectives; a decision to use a participating informant should be taken at senior level.

(f) Payment to informants from public funds should be supervised by a senior officer.

(g) Where an informant has been used who has taken part in the commission of a crime for which others have been arrested, the prosecuting solicitor, counsel, and (where he is concerned) the Director of Public Prosecutions should be informed of the fact and of the part that the informant took in the commission of the offence, although, subject to (c) above, not necessarily of his identity.

(h) Careful instruction should be given to detectives in training.

4. The Home Secretary fully endorses these broad principles. He feels sure that they are already widely applied in the police service; but in view of recent public interest he thinks it right to bring them to the notice of all chief officers of police. He asks that you will find means of commending them to everyone who may be concerned in your force. He has instructed H.M. Inspectors of Constabulary to pay particular attention, in the course of their inspections, to the arrangements made in police forces for supervision and training in these matters.

Yours sincerely,

Philip Allen

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